AQD EXHIBIT
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PENGAD 800-631-6989

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 3 TRANSPORTATION CONFORMITY

20.11.3.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.
[7/1/98; 20.11.3.1 NMAC - Rn, 20 NMAC 11.03.I.1, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.2 SCOPE:

A. Action applicability:

(1) Except as provided for in Subsection C of 20.11.3.2 NMAC or 20.11.3.126 NMAC, conformity determinations are required for:

(a) the adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the metropolitan planning organization (MPO) or the United States department of transportation (DOT);

(b) the adoption, acceptance, approval or support of transportation improvement programs (TIPs) and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the MPO or DOT; and

(c) the approval, funding or implementation of federal highway administration/federal transit administration (FHWA/FTA) projects.

(2) Conformity determinations are not required under 20.11.3 NMAC for individual projects that are not FHWA/FTA projects. However, 20.11.3.121 NMAC does apply to such projects if they are regionally significant.

B. Geographic applicability: This transportation conformity regulation is an Albuquerque-Bernalillo county air quality control board (AQCB) regulation for Bernalillo county and is included in the state implementation plan (SIP) revision pertaining to transportation conformity for Bernalillo county. The provisions of 20.11.3 NMAC shall apply to the area within Bernalillo county for which the area is designated nonattainment or has a maintenance plan for transportation-related criteria pollutants, and shall not apply to Indian lands over which the AQCB lacks jurisdiction, except that any FHWA/FTA project on Indian land that uses funds received from the FHWA or FTA or receives a federal permit must comply with 20.11.3 NMAC.

(1) The provisions of 20.11.3 NMAC apply with respect to emissions of the following criteria pollutants: ozone (O_3), carbon monoxide (CO), nitrogen dioxide (NO_2), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).

(2) The provisions of 20.11.3 NMAC apply with respect to emissions of the following precursor pollutants:

(a) volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in ozone areas;

(b) NO_x in NO_2 areas;

(c) VOC and NO_x in PM_{10} areas if the environmental protection agency (EPA) regional administrator or the director of the air agency has made a finding that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

(d) NO_x in $PM_{2.5}$ areas, unless both the EPA regional administrator and the director of the state air agency have made a finding that transportation-related emissions of NO_x within the nonattainment area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

(e) VOC, sulfur dioxide (SO_2) and ammonia (NH_3) in $PM_{2.5}$ areas either if the EPA regional administrator or the director of the state air agency has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of 20.11.3 NMAC apply to $PM_{2.5}$ nonattainment and maintenance areas with respect to $PM_{2.5}$ from re-entrained road dust if the EPA regional administrator or the director of the air agency has

made a finding that re-entrained road dust emissions within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

(4) The provisions of 20.11.3 NMAC apply to maintenance areas through the last year of a maintenance area's approved CAA Section 175A(b) maintenance plan, unless the applicable implementation plan specifies that the provisions of 20.11.3 NMAC shall apply for more than 20 years.

C. Limitations: In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to 20.11.3. NMAC, a currently conforming transportation plan and TIP shall be in place at the time of project approval as described in 20.11.3.114 NMAC, except as provided by Subsection B of 20.11.3.114 NMAC.

D. Grace period for new nonattainment areas: For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM_{10}, $PM_{2.5}$ or NO_2 since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of 20.11.3. NMAC shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

[7/1/98; 20.11.3.2 NMAC - Rn, 20 NMAC 11.03.I.2, 6/1/02; A, 6/13/05; A, 12/17/08; A, 11/15/10]

20.11.3.3 STATUTORY AUTHORITY: 20.11.3 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

[7/1/98; 20.11.3.3 NMAC - Rn, 20 NMAC 11.03.I.3, 6/1/02]

20.11.3.4 DURATION: Permanent.

[7/1/98; 20.11.3.4 NMAC - Rn, 20 NMAC 11.03.I.4, 6/1/02]

20.11.3.5 EFFECTIVE DATE: July 1, 1998, unless a later date is cited at the end of a section.

[7/1/98; 20.11.3.5 NMAC - Rn, 20 NMAC 11.03.I.5, & A, 6/1/02]

20.11.3.6 OBJECTIVE: To implement Section 176(c) of the CAA, as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs and projects which are developed, funded or approved by the United States DOT, and by the MPO or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) to the Bernalillo county portion of the SIP. 20.11.3 NMAC sets forth policy, criteria and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA.

[7/1/98; 20.11.3.6 NMAC - Rn, 20 NMAC 11.03.I.6, 6/1/02; A, 6/13/05]

20.11.3.7 DEFINITIONS: Terms used but not defined in 20.11.3 NMAC shall have the meaning given to them by the CAA, Titles 23 and 49 U.S.C., other EPA regulations, or other DOT regulations, in that order of priority. In addition to the definitions in Section 20.11.3.7 NMAC, the definitions in 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the definition in 20.11.3 NMAC shall govern.

A. **[~~"1-hour ozone NAAQS" means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.~~]** Reserved

B. **[~~"8-hour ozone NAAQS" means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.~~]** Reserved

C. **[~~"24-hour PM_{10} NAAQS" means the 24-hour PM_{10} national ambient air quality standard codified at 40 CFR 50.6.~~]** Reserved

D. **[~~"1997 $PM_{2.5}$ NAAQS" means the $PM_{2.5}$ national ambient air quality standards codified at 40 CFR 50.7.~~]** Reserved

E. **[~~"2006 $PM_{2.5}$ NAAQS" means the 24-hour $PM_{2.5}$ national ambient air quality standard codified at 40 CFR 50.13.~~]** Reserved

F. **"Air agency"** means the air quality division (AQD) of the city of Albuquerque environmental health department (EHD). The EHD, or its successor agency or authority, as represented by the department director

or his designee, is the lead air quality planning agency for Albuquerque-Bernalillo county nonattainment/ maintenance areas. The EHD serves as staff to the AQCB and is responsible for administering and enforcing AQCB regulations.

G. "Albuquerque metropolitan planning area (AMPA)" means the portion of New Mexico state planning and development district 3 that comprises the area for which federal transportation funding allocated for areas of a 200,000 or greater population is expended. The AMPA is described in the MPO's most recent transportation planning documents.

H. [~~**"Annual PM $_{10}$ NAAQS"** means the annual PM$_{10}$ national ambient air quality standard that EPA revoked on December 18, 2006.~~] Reserved

I. "Applicable implementation plan" is defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

J. "CAA" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

K. "Cause or contribute to a new violation" for a project means:

(1) to cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question if the project were not implemented; or

(2) to contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such an area.

L. "Clean data" means air quality monitoring data determined by EPA to meet the applicable requirements of 40 CFR [~~Part~~] Parts 50 and 58 [~~that~~] and to indicate attainment of [~~the~~] a national ambient air quality standard.

M. "Conformity analysis" means any regional emissions analysis or localized hot-spot computer modeling assessments or any other analyses, which serve as the basis for the conformity determination.

N. "Conformity determination" means the demonstration of consistency with motor vehicle emissions budgets or with the appropriate interim emissions test identified at 20.11.3.118 NMAC for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable implementation plan, which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities shall not:

(1) cause or contribute to any new violations of any standard in any area;

(2) increase the frequency or severity of any existing violation of any standard in any area; or

(3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

O. "Consultation" means the process by which the affected agencies identified in 20.11.3.105 NMAC confer with each other, provide to the agencies all relevant information needed for meaningful input and, prior to taking any action, consider the views of the other agencies and (except with respect to those actions for which only notification is required and those actions subject to Subsection C of 20.11.3.105 NMAC and Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC) respond in writing to substantive written comments in a timely manner prior to any final decision on such action.

P. "Control strategy implementation plan revision" means a revision to the implementation plan that contains specific strategies for controlling emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA Sections 172 (c) , 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A) and 189(d); Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).

Q. "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

R. "Design scope" or "scope" means the design aspects that shall affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

S. **"Donut areas"** means geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

T. **"DOT"** means the United States department of transportation.

U. **"EPA"** means the United States environmental protection agency.

V. **"FHWA"** means the federal highway administration of the DOT.

W. **"FHWA/FTA project"** means any highway or transit project that is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

X. **"Fiscally constrained"** means, consistent with DOT's metropolitan transportation planning regulations at 23 CFR Part 450.

Y. **"Forecast period"** means, with respect to a transportation plan, the time period covered by the transportation plan pursuant to 23 CFR Part 450.

Z. **"FTA"** means the federal transit administration of the DOT.

AA. **"Highway project"** means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

BB. **"Horizon year"** means a year for which the transportation plan describes the envisioned transportation system according to 20.11.3.106 NMAC.

CC. **"Hot-spot analysis"** means an estimation of likely future localized CO, PM_{10} and $PM_{2.5}$ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

DD. **"Increase the frequency or severity"** means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question if the project were not implemented.

EE. **"Isolated rural nonattainment and maintenance areas"** mean areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

FF. **"Lapse"** means that the conformity determination for a transportation plan or a TIP has expired, and thus there is no currently conforming transportation plan and TIP.

GG. **"Limited maintenance plan"** means a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area shall have a design value that is significantly below a given NAAQS, and it shall be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

HH. **"Local publicly-owned transit operator"** means the current transit operator, the city of Albuquerque.

II. **"Maintenance area"** means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

JJ. **"Maintenance plan"** means an implementation plan under Section 175A of the CAA, as amended.

KK. **"Metropolitan planning organization (MPO)"** means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

LL. "Mid-region council of governments (MRCOG)" means the association of local governments within New Mexico state planning and development district 3 (Bernalillo, Sandoval, Torrance and Valencia counties) that is designated by the governor of New Mexico, in consultation with the elected officials of the area, as the MPO for the Albuquerque metropolitan planning area.

MM. "Milestone" has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM_{10} nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date when that level shall be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

NN. "Motor vehicle emissions budget (MVEB)" means the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

OO. "National ambient air quality standards (NAAQS)" are those standards established pursuant to Section 109 of the CAA.

PP. "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

QQ. "NEPA process completion" means, with respect to the FHWA and the FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a finding of no significant impact or to issue a record of decision on a final environmental impact statement under NEPA.

RR. "Nonattainment area" means any geographic region of the United States that has been designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

SS. "Project" means a highway project or a transit project.

TT. "Protective finding" means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirement relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

UU. "Public involvement committee (PIC)" means the permanent advisory committee established by the MRCOG to provide proactive public input to the transportation planning process.

VV. "Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws" means any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or federal transit laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers or contractors or entities that are only paid for services or products created by their own employees.

WW. "Regionally significant project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc. or transportation terminals) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

XX. "Safety margin" means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance.

YY. "Standard" means a national ambient air quality standard.

ZZ. "State implementation plan (SIP)" (see applicable implementation plan).

AAA. "State DOT" means the New Mexico department of transportation or its successor agency or authority, as represented by the department secretary or his designee.

BBB. "Title 23 U.S.C." means Title 23 of the United States Code.

CCC. "Transit" is mass transportation by bus, rail or other conveyance that provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

DDD. "Transit project" means an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes,

schedules or fares and may consist of several phases. For analytical purposes, a transit project shall be defined inclusively enough to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

EEE. "Transportation conformity technical committee (TCTC)" means the group that provides interagency consultation and consists of transportation, planning and air quality staff of the MPO, local government staff, staff from the state DOT, EPA, FHWA, FTA, and staff from the air agency, and that is responsible for evaluating and establishing the assumptions and circumstances for the application of transportation and air quality models.

FFF. "Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA Section 176(c)(8), that is either one of the types listed in Section 108 of the CAA, or any other measure that reduces emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of 20.11.3 NMAC.

GGG. "Transportation improvement program (TIP)" means a transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

HHH. "Transportation plan" means the official 20-year fiscally constrained intermodal metropolitan transportation plan (MTP) that is developed for the metropolitan planning area through the metropolitan planning process, pursuant to 23 CFR Part 450.

III. "Transportation project" is a highway project or a transit project.

JJJ. "Written commitment" means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

KKK. Acronyms

(1) **AMPA**-Albuquerque metropolitan planning area
(2) **AQCB**-Albuquerque-Bernalillo county air quality control board
(3) **CAA**-Clean Air Act, as amended
(4) **CFR**-code of federal regulations
(5) **CO**-carbon monoxide
(6) **DOT**-U.S. department of transportation
(7) **EHD**-Albuquerque environmental health department
(8) **EPA**-U.S. environmental protection agency
(9) **FHWA**-federal highway administration, DOT
(10) **FTA**-federal transit administration, DOT
(11) **MPO**-metropolitan planning organization
(12) **MRCOG**-mid-region council of governments
(13) **MTB**-metropolitan transportation board
(14) **MTP**-metropolitan transportation plan
(15) **MVEB**-motor vehicle emissions budget
(16) **NAAQS**-national ambient air quality standards
(17) **NEPA**-National Environmental Policy Act
(18) **NO_x** -oxides of nitrogen
(19) **PIC**-public involvement committee
(20) **$PM_{2.5}$**-particulate matter less than or equal to 2.5 micrometers in diameter
(21) **PM_{10}**-particulate matter less than or equal to 10 micrometers in diameter
(22) **SIP**-state implementation plan (applicable implementation plan)
(23) **State DOT**-New Mexico department of transportation
(24) **STIP**-state transportation improvement program

(25) **TCC**-transportation coordinating committee
(26) **TCM**-transportation control measure
(27) **TCTC**-transportation conformity technical committee
(28) **TIP**-transportation improvement program
(29) **VOC**-volatile organic compound
(30) **VMT**-vehicle miles traveled {FR Vol. 77 No. 50 pp. 14979-88 3/14/12 re: 40 CFR 93.101}
[7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02; A, 6/13/05; A, 12/17/08; A, 11/15/10]

20.11.3.8 VARIANCES: [Reserved]
[7/1/98; 20.11.3.8 NMAC - Rn, 20 NMAC 11.03.I.8, 6/1/02]

20.11.3.9 SAVINGS CLAUSE: Any amendment to 20.11.3 NMAC that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance or board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or section in effect at the time the violation was committed.
[7/1/98; 20.11.3.9 NMAC - Rn, 20 NMAC 11.03.I.9, 6/1/02; A, 6/13/05]

20.11.3.10 SEVERABILITY: If any section, paragraph, sentence, clause or word of 20.11.3 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of the remaining provisions of 20.11.3 NMAC.
[7/1/98; 20.11.3.10 NMAC - Rn, 20 NMAC 11.03.I.10, 6/1/02; A, 6/13/05]

20.11.3.11 DOCUMENTS: Documents incorporated and cited in 20.11.3 NMAC may be viewed at the Albuquerque environmental health department, one civic plaza NW, room 3023, 400 Marquette NW, Albuquerque, NM 87102.
[7/1/98; 20.11.3.11 NMAC - Rn, 20 NMAC 11.03.I.11, 6/1/02; A, 6/13/05]

20.11.3.12 [Reserved]
[7/1/98; 20.11.3.12 NMAC - Rn, 20 NMAC 11.03.I.12, & A, 6/1/02; Repealed, 6/13/05]

20.11.3.13 to 20.11.3.102 [Reserved]

20.11.3.103 PRIORITY: When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.
[20.11.3.103 NMAC - Rn, 20.11.3.200 NMAC, 11/15/10]

20.11.3.104 FREQUENCY OF CONFORMITY DETERMINATIONS:
A. Conformity determinations and conformity redetermination for transportation plans, TIPs and FHWA/FTA projects shall be made according to the requirements of 20.11.3.104 NMAC and the applicable implementation plan.
B. Frequency of conformity determinations for transportation plans:
(1) Each new transportation plan shall be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.
(2) All transportation plan amendments shall be found to conform before the transportation plan amendments are approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in 20.11.3.126 NMAC or 20.11.3.127 NMAC. The conformity determination shall be based on the transportation plan and the amendment taken as a whole.
(3) The MPO and DOT shall determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, a 12-month grace period will be implemented as described in Subsection F of 20.11.3.104 NMAC. At the end of this 12-month grace period, the existing conformity determination shall lapse.
C. Frequency of conformity determinations for transportation improvement programs:

(1) A new TIP shall be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in 20.11.3.126 NMAC or 20.11.3.127 NMAC and has been made in accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(3) The MPO and DOT shall determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, a 12-month grace period will be implemented as described in Subsection F of 20.11.3.104 NMAC. At the end of this 12-month grace period, the existing conformity determination shall lapse.

D. Projects: FHWA/FTA projects shall be found to conform before they are adopted, accepted, approved or funded. Conformity shall be re-determined for any FHWA/FTA project if one of the following occurs: a significant change in the project's design concept and scope; three years have elapsed since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes. Major steps include NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and, construction (including federal approval of plans, specifications and estimates).

E. Triggers for transportation plan and TIP conformity determinations: Conformity of existing transportation plans and TIPs shall be re-determined within two years of the following, or after a 12-month grace period (as described in Subsection F of 20.11.3.104 NMAC) the existing conformity determination shall lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) the effective date of EPA's finding that motor vehicle emission budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to Subsection E of 20.11.3.118 NMAC and can be used for transportation conformity purposes;

(2) the effective date of EPA approval of a control strategy implementation plan revision or maintenance plan that establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval; and

(3) the effective date of EPA promulgation of an implementation plan that establishes or revises a motor vehicle emissions budget or adds, deletes or changes TCMs.

F. Lapse grace period. During the 12-month grace period referenced in Paragraph (3) of Subsection B of 20.11.3.104 NMAC, Paragraph (3) of Subsection C of 20.11.3.113 NMAC, and Subsection E of 20.11.3.113 NMAC, a project may be found to conform according to the requirements of 20.11.3 NMAC:

(1) the project is included in the currently conforming transportation plan and TIP (or regional emissions analysis); or

(2) the project is included in the most recent conforming transportation plan and TIP (or regional emissions analysis).

[20.11.3.104 NMAC - Rn & A, 20.11.3.201 NMAC, 11/15/10]

20.11.3.105 CONSULTATION:

A. General: Transportation plans and programs shall be in conformity with the applicable implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo county. The MRCOG, as the MPO, is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo county. The applicable plans and programs are the TIP and the MTP. The document serving to demonstrate conformity is the transportation/air quality conformity finding. 20.11.3.105 NMAC provides procedures for interagency consultation (federal, state and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the MPO, state DOT and DOT with the air agency and EPA before making conformity determinations and by the air agency and EPA with the MPO, state DOT and DOT in developing applicable implementation plan revisions.

B. Interagency consultation procedures: General factors: The affected agencies shall participate in an interagency consultation process to assure that proposed transportation investments conform with the applicable implementation plan developed pursuant to the CAA. The affected agencies shall participate in a consultation process during the development of the transportation-related elements in the applicable SIP (i.e. TCMs, the MTP, and the TIP under 23 CFR Section 450.314 and 49 CFR Section 613.100), any significant revisions to the preceding documents and all conformity determinations required by 20.11.3 NMAC.

(1) The affected agencies acting in consultation include: EHD; EPA; FHWA; FTA; MPO; state DOT; local publicly-owned transit operator; appropriate local government transportation agencies and land use

planning agencies (e.g. city of Albuquerque and Bernalillo county planning departments); and other federal and state agencies as appropriate.

(2) Each lead agency in the consultation process required under Subsection D of 20.11.3.105 NMAC (i.e. the agency responsible for preparing the final document subject to the interagency consultation process) shall provide reasonable opportunity for consultation with the affected agencies identified above. The lead agency shall provide to the affected agencies all information needed for meaningful input and shall consider the views of each agency and respond in writing to substantive written comments submitted during the formal comment period prior to making a final decision on such document. Such written response shall be made part of the record of any decision or action. Roles of these agencies are further described in Paragraph (1) of Subsection C of 20.11.3.105 NMAC below.

(3) Project planning, public involvement, management systems, project development and other requirements for the MPO, state DOT and the local publicly-owned transit operator are covered by the applicable DOT rules and regulations for MPOs and state DOTs (23 CFR Part 450, 500, 626 and 771, 49 CFR 613).

C. Interagency consultation procedures roles and responsibilities:

(1) **Development of transportation plans and programs and associated conformity determinations.**

(a) The MPO, as the lead transportation planning agency, has the primary responsibility in the AMPA for developing the MTP, TIP and technical analyses related to travel demand and other associated modeling, data collection and coordination of consultation for these activities with the agencies specified in Paragraph (1) of Subsection B of 20.11.3.105 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO shall be responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the EHD. Corridor and project-level hot spot and emissions analyses, developed in consultation with the EHD, shall be the responsibility of the project-implementing agency through the NEPA process or similar environmental evaluation process.

(b) The committees and member agencies, identified in the most recent MPO document regarding public involvement procedures for transportation plans and programs, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*, shall participate in the MPO process for the development, monitoring and revision of the MTP and the development of the TIP.

(i) The MPO shall forward a preliminary version of the MTP, the TIP and the draft conformity finding to the AQCB for review with a minimum of 14 calendar days to provide comments. Upon release of the final draft of the MTP and TIP for public review, the MPO shall submit the final drafts of the MTP, TIP and accompanying conformity documents to the AQCB and agencies in Paragraph (1) of Subsection B of 20.11.3.105 NMAC for review and comment before adoption and final approval by the MTB. Following review of the conformity determination, the AQCB shall state whether the TIP, the MTP or both are in compliance with the applicable implementation plan. The MPO shall provide a review and comment period consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613). Briefings to the AQCB shall be provided upon request.

(ii) The MPO shall provide information and appropriate advance notification of meeting places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on transportation and air quality to each of the agencies specified in Paragraph (1) of Subsection B of 20.11.3.105 NMAC in accordance with the public involvement process adopted by the MPO, consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613) and described in the MRCOG's public involvement document, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*. The MPO's compliance with the New Mexico Open Meetings Act is documented annually. Resolution of conflicts shall follow the provisions of Subsection E of 20.11.3.105 NMAC.

(2) **Development of applicable implementation plans:** Within the nonattainment/maintenance area, the EHD, in consultation with the MPO, shall be responsible for developing the transportation-related components for the applicable SIP, air quality modeling, general emissions analysis, emissions inventory, all related activities and coordination of these tasks with the agencies specified in Paragraph (1) of Subsection B of 20.11.3.105 NMAC through the TCTC as described in Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC. Upon release of the final draft of the SIP revision for public review, the EHD shall submit the final draft document to the MTB and agencies in Paragraph (1) of Subsection B of 20.11.3.105 NMAC for review and comment before final adoption by the AQCB. The EHD shall provide at least a 30 day review and comment period consistent with CAA requirements. Briefings to the MTB shall be provided upon request.

(3) The organizational level of regular consultation is described in Subsection B of 20.11.3.105 NMAC and Subsection C of 20.11.3.105 NMAC. All correspondence concerning consultation related to the transportation conformity SIP shall be addressed to the designated points of contact below:

(a) EPA: regional administrator or designee;

(b) FHWA: division administrator or designee;

(c) FTA: regional administrator or designee;

(d) State DOT: secretary of transportation or designee;

(e) MPO: MRCOG executive director or designee;

(f) EHD: director or designee;

(g) local publicly-owned transit operator: chief administrative officer or designee;

(h) local governments within the nonattainment/maintenance area: chief administrative officer or equivalent or designee.

(4) The MPO shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC regarding the MTP, TIP and related conformity determinations The project implementing agencies shall respond in writing to substantive written comments regarding projects in accordance with the provisions of 20.11.3 NMAC. The EHD shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC regarding the transportation components of the applicable implementation plan for the nonattainment/maintenance area, in accordance with the provisions of 20.11.3 NMAC. All formal comments (e.g. those received during the public comment period) and responses to those comments shall be included within final documents before they are forwarded for review and final approval by the FHWA/FTA or EPA, as appropriate.

(5) Prior to AQCB adoption of a TCM in the applicable implementation plan, the MPO shall, in consultation and coordination with the agencies identified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC, develop the proposed TCM in a manner consistent with the MTP and TIP transportation development processes. After approval of a TIP, MTP or both, the AQCB shall incorporate all proposed TCMs into the applicable implementation plan. The necessary TCMs shall be specifically described in the applicable implementation plan. TCMs shall also be cross-referenced to the approved TIP, MTP or both. EHD shall coordinate the necessary efforts to achieve inclusion of the proposed TCM into the applicable implementation plan. The TCMs approved by the AQCB and subsequently by the EPA as part of the applicable implementation plan shall receive priority funding for implementation in a manner consistent with funding and phasing schedules specified in the MPO's TIP or MTP or both.

(a) In the event that implementation of a TCM is infeasible in the time frame for that measure in the applicable implementation plan (as defined in Subsection D of 20.11.3.7 NMAC), the parties in the interagency consultation process established pursuant to Paragraph (1) of Subsection D of 20.11.3.105 NMAC shall assess whether such a measure continues to be appropriate. When the MPO and the AQCB concur that a TCM identified in the applicable implementation plan is no longer appropriate, the agencies may initiate the process described in Subparagraph (b) through Subparagraph (e) of Paragraph (5) of Subsection C of 20.11.3.105 NMAC to identify and adopt a substitute TCM.

(b) **Substitution of TCMs**. Any TCM that is specified in the applicable implementation plan may be replaced or added to the implementation plan with alternate or additional TCMs without an implementation plan revision if the proposed measure meets the following provisions:

(i) upon request by the MPO, the EHD shall convene the TCTC to identify and evaluate possible substitute and additional measures; consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 6;

(ii) the substitute TCM shall provide for equivalent or greater emissions reductions than the TCM to be replaced in the applicable implementation plan, as demonstrated by an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced TCM in the implementation plan;

(iii) the substitute TCM shall be implemented in accordance with a schedule that is consistent with the schedule provided for the TCM contained in the applicable implementation plan; or if the implementation plan date for implementation of the TCM to be replaced has already passed, a TCM selected pursuant to 20.11.3 NMAC that requires funding shall be included in the first year of the next MTP and TIP adopted by the MPO; however, the substituted TCM shall be implemented as soon as possible, but not later than one year from the date of the original TCM, and in no case, later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iv) in order for the AQCB to adopt substitute and additional TCMs, there shall be evidence of adequate personnel, funding and authority under state or local law to implement, monitor and enforce

the control measures; commitments to implement the substitute TCMs shall be made by the agency with legal authority for implementation;

(v) the TCMs substituted under 20.11.3.105 NMAC for purposes of the applicable implementation plan shall receive priority funding for implementation within the MPO's MTP and TIP funding processes; and

(vi) no TCM shall be replaced until the substitute TCM has been adopted and the existing TCM in the applicable implementation plan has been rescinded by the AQCB; adoption of a substitute TCM by the AQCB formally rescinds the previously applicable TCM and adopts the substitute TCM.

(c) **Public participation:** After the concurrence required under Subparagraph (a) of Paragraph (5) of Subsection C of 20.11.3.105 NMAC, the AQCB shall conduct a public hearing and comment process, in accordance with 40 CFR 52.102, on the proposed substitute TCM(s). The hearing can only be held after a reasonable public notice and comment period, which begins at least 30 days prior to the hearing date. The AQCB shall ensure that:

(i) the public is notified by prominent advertising in the area affected announcing the time, date and place of the hearing;

(ii) each proposed plan or revision is available for public inspection in at least one location in the applicable area;

(iii) the MPO, EPA, affected local agencies and other interested parties are notified; and

(iv) a description of the TCM(s), analysis supporting the proposal, assumptions and methodology are available to the public, the MPO and EPA for at least 30 days before the public hearing and at least 30 days prior to the close of the public comment period.

(d) **Concurrence process for substitute TCMs:**

(i) before initiating any public participation process, the AQCB, MPO and EPA shall concur with the appropriateness and equivalency of the substitute or additional TCM;

(ii) the AQCB shall respond to all public comments and submit to EPA a summary of comments received during the public comment period along with the responses following the close of the public comment period;

(iii) the EPA shall notify the AQCB within 14 days if EPA's concurrence with the substitution TCM has changed as a result of public comment;

(iv) all substitute TCMs shall be adopted by the AQCB following the public comment period and EPA's concurrence described in Subparagraph (d) of Paragraph (5) of Subsection C of 20.11.3.105 NMAC; if not adopted, the substitute TCM cannot replace the existing TCM.

(e) **Technical information:** The analysis of substitute TCMs shall be consistent with methodology used for evaluating TCMs in the nonattainment or maintenance plan. Where emissions models or transportation models have changed since those used for purposes of evaluating measures in the nonattainment or maintenance plan, the TCM to be replaced and the substitute TCMs shall be evaluated using the latest modeling techniques for purposes of demonstrating equivalency or greater emissions reductions. The key methodology and assumptions shall be consistent with EPA approved regional and hot-spot emissions models (for CO, PM_{10} and $PM_{2.5}$), the area's transportation model, and population and employment growth projections.

(f) **Record keeping:** The AQCB shall maintain documentation of approved TCM substitutions. The documentation shall provide a description of the substitute and replaced TCMs, including requirements and schedules. The documentation shall also provide a description of the substitution process including the public and agency participation and coordination with the TCTC, the public hearing and comment process, EPA concurrence and AQCB adoption. The documentation shall be submitted to EPA following adoption of the substitute TCMs by the AQCB, and made available to the public as an attachment to the applicable implementation plan.

(g) **Adoption:**

(i) concurrence by the metropolitan planning organization, the state air pollution control agency and the administrator as required by Subparagraph (i) of Paragraph (d) of Subsection C of 20.11.3.105 NMAC, shall constitute adoption of the substitute or additional control measures so long as the requirements of Paragraph (b) of Subsection C of 20.11.3.105 NMAC are met;

(ii) once adopted, the substitute or additional control measures become, by operation of law, part of the state implementation plan and become federally enforceable;

(iii) within 90 days of its concurrence under Subparagraph (i) of Paragraph (d) of Subsection C of 20.11.3.105 NMAC, the state air pollution control agency shall submit the substitute or additional control measure to the administrator for incorporation in the codification of the applicable implementation plan;

notwithstanding any other provision of the Clean Air Act, no additional state process shall be necessary to support such revision to the applicable plan.

(h) **No requirement for express permission**. The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of 20.11.3.105 NMAC and the funding or approval of such a control measure shall not be contingent upon the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(i) **No requirement for new conformity determination**. The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of 20.11.3.105 NMAC shall not require:

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

D. Interagency consultation procedures: Specific processes.

(1) Interagency consultation procedures for the Bernalillo county nonattainment/maintenance area, in accordance with Subsection C of 20.11.3.105 NMAC, shall involve the MPO (transportation, land use and transit members from within the AMPA), state DOT, EPA, FHWA, FTA and the air agency. The TCTC's role in interagency consultation for the specific processes is described below. The TCTC shall include representatives as described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC. The TCTC shall be established by the air agency in cooperation with the MPO. The TCTC shall meet on an as-needed basis. The air agency, in consultation with the MPO, shall be responsible for convening meetings and establishing meeting agendas.

(a) The TCTC shall evaluate and participate in establishing the circumstances for the application of a transportation or air quality model (or models). Committee review shall include VMT forecasting and associated methods and assumptions to be used in: 1) hot-spot and regional emissions analysis for establishing motor vehicle emissions budgets; 2) developing the MTP and the TIP; 3) developing implementation plan revisions directly applicable to transportation, and 4) making the conformity determinations and planning assumptions identified in 20.11.3.110 NMAC. The TCTC shall also review assumptions, analyses and results of the conformity and fiscal constraint determinations and other applicable implementation plan revisions or actions affecting the MTP and transportation programs. The TCTC shall function as a cooperative interagency effort to share mobile source modeling and transportation and air quality modeling information, and to evaluate modeling assumptions through interagency consultation. Regional modeling shall be the responsibility of the MPO and the air agency as appropriate. Hot-spot analysis shall be the responsibility of the lead agency of the project requiring the analysis. Before new models used in hot-spot or regional emissions analyses are adopted for general use, the TCTC shall be provided an opportunity to review and comment. This process also applies to consultation on the design, schedule and funding of research and data collection efforts regarding regional transportation models developed by the MPO (e.g. household travel transportation surveys) described in 20.11.3.110 NMAC. New modeling information shall be presented by the air agency and the MPO in regularly scheduled meetings.

(b) The TCTC shall determine which minor arterials and other transportation projects shall be considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects shall be considered to have a significant change in design concept, timing and scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the appropriate agencies identified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC to assess the impact of this project change on the conformity determination. The MPO shall redetermine transportation conformity for air quality if a significant change occurs within the transportation network that is likely to lead to a meaningful increase in a pollutant for which the nonattainment area exceeds the NAAQS, or for an area that is designated as attainment and is subject to a maintenance plan.

(c) The TCTC shall evaluate whether projects otherwise exempt from meeting the regional or hot-spot conformity analysis requirements shall be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The MPO's conformity documents shall include a list of transportation projects exempted from inclusion in a regional conformity determination. Exempt projects are identified in 20.11.3.126 NMAC and 20.11.3.127 NMAC. The process used to reach a determination of exemption shall include an evaluation of whether or not the exempt project shall interfere with or impede the implementation of TCMs in the applicable implementation plan. If no substantive comments related to air quality impacts are received as part of the TIP review process, the lead agency for the project may proceed with implementation of the exempt project. If substantive air quality impact comments are received which indicate that an exempt project may adversely affect air

quality, the lead agency for the project shall consult with the air agency and the MPO to determine the appropriate action necessary to address the adverse air quality impacts.

(d) If TCMs are included in the SIP, the MPO shall give maximum priority to approval or funding of those TCMs, report to the AQCB annually whether those TCMs are on schedule and, if not, what delays have been encountered, what obstacles to implementation have been identified and whether or not these obstacles are likely to be overcome. The AQCB shall also consider whether delays in TCM implementation necessitate a SIP revision to remove, substitute, or modify TCMs or identify other reduction measures. If substitute TCMs or other reduction measures beyond those already in the SIP are deemed necessary through the consultation process specified in 20.11.3.105 NMAC, the MPO shall work with the members of the TCTC to identify and coordinate appropriate modifications to the MTP, TIP and conformity determination. All revisions to the MTP, TIP and conformity determination shall be made as part of the MPO's transportation planning process.

(e) The MPO shall, through its transportation planning process, notify the agencies represented on the TCTC regarding revisions and amendments to the MTP and TIP that merely add or delete exempt projects identified in 20.11.3.126 NMAC.

(f) If Bernalillo county is designated nonattainment for PM_{10} or $PM_{2.5}$, the consultative process as specified in Subsection D of 20.11.3.105 NMAC shall be used to coordinate the identification of projects located at sites that have vehicle and roadway emission and dispersion characteristics which are similar to those sites that have violations verified by monitoring. A quantitative PM_{10} hot-spot analysis shall be required for these projects in accordance with Subsection B of 20.11.3.123 NMAC. The air agency, in consultation with the MPO, shall advise the appropriate lead agency responsible for project development of the projects identified and the basis for their identification.

(g) The MPO shall provide written notification to all agencies in the MTP, TIP and conformity determination processes, including the AQCB, of plan revisions or plan amendments that merely add or delete exempt projects identified in 20.11.3.126 NMAC.

(h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas shall be governed by Subparagraph (c) of Paragraph (2) of Subsection [~~N~~] G of 20.11.3.109 NMAC. { FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.105}

(2) Interagency consultation procedures shall include the agencies specified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC. These agencies shall participate in the following processes.

(a) In addition to the triggers defined in 20.11.3.105 NMAC, the air agency may request a new conformity determination when an emergency project involves substantial functional, location or capacity changes, or when the project may otherwise adversely affect the transportation conformity determination.

(b) If an adjacent area is designated nonattainment and the area includes another MPO, the agencies involved shall cooperatively share the responsibility for conducting conformity determinations for transportation activities that cross borders of the MPOs or nonattainment areas. An agreement shall be developed between the MPOs and other appropriate local and state government agencies to address the responsibilities of each for regional emissions analysis.

(3) Although the metropolitan planning area may not include all of the nonattainment/ maintenance area of Bernalillo county, the MPO (which is also the regional planning organization for all of Bernalillo county), in coordination with the state DOT, shall be responsible for conducting conformity analyses and conformity determinations for transportation activities for the entire nonattainment/ maintenance area that is located within the MPO's area of planning responsibility.

(4) **Interagency consultation on regionally significant non-FHWA/FTA projects:**

(a) Any group, entity or individual planning to construct a regionally significant transportation project that is not a FHWA/FTA project (including a project for which alternative locations, design concept and scope, or the no-build option is still being considered), including projects planned by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, shall ensure that these plans are disclosed to the MPO on a regular basis through the MTP and TIP development processes, or as soon as they are identified, and shall notify the MPO immediately of any changes to an existing plan so that these transportation projects can be incorporated into the regional emissions analysis and modeling for the nonattainment/maintenance area. Any member of the TCTC may request that the TCTC make a determination regarding whether a project is regionally significant. Upon receipt of a written request stating the reasons why the TCTC should make a determination, the EHD in coordination with the MRCOG shall convene a meeting of the TCTC to make a determination regarding regional significance. If the TCTC determines that the non-FHWA/FTA project is not regionally significant, no further actions by the TCTC are required. If the TCTC determines that the non-FHWA/FTA project is regionally significant, the TCTC will follow

the requirements of 20.11.3 NMAC and the MPO will incorporate the project into the regional emissions analysis, the TIP and the MTP.

(b) The sponsor of any regionally significant project, and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, who knows about any such project through applications for approval, permitting, funding or otherwise gains knowledge of a regionally significant project, shall promptly disclose the project to the MPO. Such disclosures shall be made not later than the first occasion on which any of the following actions is sought: any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent upon the completion of a regionally significant project. At the earliest opportunity, the MPO shall apprise the agencies participating in the consultation process identified above in Paragraph (1) of Subsection D of 20.11.3.105 NMAC of these projects and include them in the conformity analysis networks.

(c) **Procedures to address non-conforming regionally significant projects not in the TIP or MTP or both.** When an regionally significant project has not been included in the TIP or MTP or both, the TCTC shall participate in the air quality evaluation of a non-conforming regionally significant project to ensure that the project is integrated into the regional emissions analysis, the TIP and the MTP in a manner consistent with the MPO's transportation planning process, the requirements of 20.11.3 NMAC and other applicable federal requirements. Section 23 CFR 450.316 lists factors that shall be considered as part of the planning process. Among the factors that shall be considered is an analysis of the effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the funding source. Therefore, a regionally significant project funded entirely with local funding is subject to the planning requirements of Section 23 CFR 450.316. The analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing and employment. Another factor that shall be considered is the overall social, economic, energy and environmental effects of transportation decisions (including consideration of the effects and impacts of the transportation plan on the human, natural and man-made environment and consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems in support of 23 U.S.C. 109(h) and Section 14 of the Federal Transit Act (49 U.S.C. 1610), Section 4(f) of the DOT Act (49 U.S.C. 303) and Section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)). All projects, including regionally significant projects not yet included in a TIP or MTP or both, shall follow the requirement in 23 CFR 450.316 that calls for a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs and that provides for involvement of local, state and federal environment resource (e.g., EPA, EHD) and permit agencies as appropriate.

(d) If a regionally significant project has not been disclosed in a timely manner to the MPO and other agencies involved in the consultation process, then, for the purposes of 20.11.3.121 NMAC, the regionally significant project shall not qualify as a conforming project until the project complies with the requirements of 20.11.3 NMAC. When a regionally significant project has not been included in the regional emissions analysis for the current conforming TIP or MTP or both, proceeding toward implementing the project without complying with 20.11.3.105 NMAC and 20.11.3.121 NMAC may be inconsistent with federal and local laws including, but not limited to the following.

(i) **23 U.S.C. Section 109(i).** This requires that the secretary of transportation for the DOT consult with the administrator for the EPA to develop and promulgate guidelines to assure that highways constructed pursuant to Title 23 of the U.S. Code are consistent with the applicable implementation plan pertaining to a nonattainment area or an attainment area subject to a maintenance plan. 20.11.3 NMAC is part of the applicable implementation plan.

(ii) **23 CFR Section 450.312, metropolitan transportation planning: Responsibilities, cooperation, and coordination.** This prohibits the MRCOG from approving any transportation plan or program that does not conform to the applicable implementation plan. Regionally significant projects are required to be included in the regional emissions analysis for the transportation plan or program.

(iii) **23 CFR Section 450.324, transportation improvement program: General.** This requires that the TIP include all regionally significant projects to be funded with non-federal funds in the air quality analysis for nonattainment areas and areas subject to a maintenance plan.

(iv) **20.11.3 NMAC, *Transportation Conformity*.** This regulation requires that regionally significant projects be included in the transportation plans and the regional emissions analysis. Failure to include a regionally significant project in a transportation plan violates 20.11.3 NMAC and jeopardizes approval of the regional MTP and the TIP.

(e) **Consequences of implementing a non-conforming regionally significant project:** Violations of 20.11.3 NMAC may result in criminal, civil and administrative penalties, including a potential administrative penalty of $15,000 per day of non-compliance. In addition, the EPA may determine that implementing a nonconforming regionally significant project violates the applicable implementation plan, and the EPA may impose federal sanctions that would jeopardize the receipt of federal transportation funds to the affected area, including Title 23, U.S.C. or Federal Transit Act funds. In addition, the FHWA must periodically review the transportation planning process used by the MRCOG, and failure to follow federal requirements may adversely affect FHWA's certification of the MRCOG process.

(f) For the purposes of 20.11.3.105 NMAC and 20.11.3.121 NMAC, the phrase "adopt or approve a regionally significant project" means the first time any action necessary to authorize a project occurs, such as any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

(5) When there is insufficient information to model the projects described in Paragraph (4) of Subsection D of 20.11.3.105 NMAC, the MPO, in consultation with the lead agency for the project, shall make assumptions about the location, timing, design concept and scope for those projects that are disclosed to the MPO as required in Paragraph (4) of Subsection D of 20.11.3.105 NMAC.

(6) The MPO or other consulting agencies shall provide copies of adopted documents and supporting information on the approved MTP or TIP conformity determination or adopted SIP revisions to all agencies listed in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

E. Resolving conflicts:

(1) The air agency and the MPO (or state DOT when applicable) shall make a good-faith effort to address the major concerns of the other party and reach a resolution. Every reasonable effort shall be made to resolve differences. In the event that the parties cannot reach agreement, the conflict shall be escalated to the governor.

(2) In the event that the parties agree that every reasonable effort has been made to address major concerns but no further progress is possible, the MPO shall promptly notify the director of the air agency in writing of the inability to resolve concerns or agree upon the final decision or action. Notification shall be provided within 30 days and shall be provided by registered mail. The MPO shall cite this paragraph in any such notification to the air agency.

(3) The air agency has 14 calendar days from the date of receipt of notification as required in Paragraph (2) of Subsection E of 20.11.3.105 NMAC to appeal to the governor. Notification shall be provided by registered mail. The air agency shall cite this paragraph in any notification of a conflict that requires action by the governor or his designee. If the air agency appeals to the governor, the final conformity determination shall have the concurrence of the governor. The governor or his designee may issue a written decision on the appeal within 30 calendar days of receipt of the appeal. If the air agency does not appeal to the governor within 14 calendar days from receipt of written notification, the MPO may proceed with the final conformity determination. The governor may delegate his role in this process, but not to the members or staff of: the AQCB, director of the city or county EHD, secretary of the environment department, chief of the state air quality bureau, manager of the city of Albuquerque's air quality division, the environmental improvement board, secretary of the DOT, state highway commission or an MPO.

F. Public consultation procedures: Affected agencies making conformity determinations on transportation plans, programs and projects shall establish a proactive public involvement process that provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying shall be consistent with the fee

schedule contained in 49 CFR 7.43 and NMSA 14-2-9.B.3. In addition, these agencies shall specifically address in writing all public comments stating that known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis that supports a proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.
[20.11.3.105 NMAC - Rn & A, 20.11.3.202 NMAC, 11/15/10]

20.11.3.106 CONTENT OF TRANSPORTATION PLANS AND TIME FRAME OF CONFORMITY DETERMINATIONS:

A. Transportation plans adopted after January 1, 1997 in serious, severe or extreme ozone non-attainment areas and in serious CO nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The MPO, in developing the transportation plan in consultation with the affected agencies identified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC, may choose any years to be horizon years, subject to the following restrictions:

(a) horizon years may be no more than 10 years apart;

(b) the first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model;

(c) the attainment year must be a horizon year if it is in the time frame of the transportation plan and conformity determination;

(d) the last year of the transportation plan's forecast period shall be a horizon year; and

(e) if the time frame of the conformity determination has been shortened under Subsection D of 20.11.3 NMAC, the last year of the time frame of the conformity determination must be a horizon year.

(2) For these horizon years:

(a) the transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by 20.11.3.105 NMAC;

(b) the highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years; additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones; each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO; transit facilities, equipment and services envisioned for the future shall be identified in terms of design concept, design scope and operating policies that are sufficient for modeling transit ridership; additions and modifications to the transportation network shall be described sufficiently to demonstrate a reasonable relationship between expected land use and the envisioned transportation system; and

(c) other future transportation policies, requirements, services and activities, including intermodal activities, shall be described.

B. Two-year grace period for transportation plan requirements in certain ozone and CO areas: The requirements of Subsection A of 20.11.3.106 NMAC apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two years from the following:

(1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) the official notice by the census bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or,

(3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

C. Transportation plans for other areas: Transportation plans for other areas shall meet the requirements of Subsection A of 20.11.3.106 NMAC at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future shall be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of 20.11.3.109 NMAC through 20.11.3.119 NMAC.

D. Time frame of conformity determination:

(1) Unless an election is made under Paragraph (2) or (3) of Subsection D of 20.11.3.106 NMAC, the time frame of the conformity determination shall be through the last year of the transportation plan's forecast period.

(2) For areas that do not have an adequate or approved CAA Section 175A(b) maintenance plan, the MPO may elect to shorten the time frame of the transportation plan and TIP conformity determination, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(a) The shortened time frame of the conformity determination must extend at least to the latest of the following years:

(i) the tenth year of the transportation plan;

(ii) the latest year for which an adequate or approved motor vehicle emissions budget(s) is established in the submitted or applicable implementation plan; or

(iii) the year after the completion date of a regionally significant project if the project is included in the TIP or the project requires approval before the subsequent conformity determination.

(b) The conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis, if such a year extends beyond the time frame of the conformity determination.

(3) For areas that have an adequate or approved CAA Section 175A(b) maintenance plan, the MPO may elect to shorten the time frame of the conformity determination to extend through the last year of such maintenance plan after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(4) Any election made by an MPO under Paragraph (2) or (3) of Subsection D of 20.11.3.106 NMAC shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

E. Savings: The requirements of 20.11.3.106 NMAC supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

[20.11.3.106 NMAC - Rn & A, 20.11.3.203 NMAC, 11/15/10]

20.11.3.107 RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY WITH THE NEPA PROCESS: The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in 20.11.3.109 NMAC through 20.11.3.119 NMAC for projects not from a TIP before NEPA process completion.

[20.11.3.107 NMAC - Rn & A, 20.11.3.204 NMAC, 11/15/10]

20.11.3.108 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS: Transportation plans and TIPs shall be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR Part 450 in order to be found in conformity. The determination that the MTP and TIP are fiscally constrained is made through the MPO's transportation planning process, which includes the agencies represented in the consultation process described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

[20.11.3.108 NMAC - Rn & A, 20.11.3.205 NMAC, 11/15/10]

20.11.3.109 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL:

A. In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT shall demonstrate that the applicable criteria and procedures in 20.11.3 NMAC are satisfied. The MPO and DOT shall comply with all applicable conformity requirements of implementation plans and court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs and FHWA/FTA projects), the relevant pollutant(s) and the status of the implementation plan.

B. Table 1 in Subsection B of 20.11.3.109 NMAC indicates the criteria and procedures in 20.11.3.110 NMAC through 20.11.3.119 NMAC, which apply for transportation plans, TIPs and FHWA/FTA projects. Subsection C [~~through Subsection K~~] of 20.11.3.109 NMAC explains when the budget, and interim emissions [~~and hot-spot~~] tests are required for each pollutant and NAAQS. Subsection D of 20.11.3.109 NMAC explains when a hot-spot test is required. Subsection [~~L~~] E of 20.11.3.109 NMAC addresses conformity

requirements for areas with approved or adequate limited maintenance plans. Subsection [~~M~~] F of 20.11.3.109 NMAC addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection [~~N~~] G of 20.11.3.109 NMAC addresses isolated rural nonattainment and maintenance areas. Table 1 follows: {FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.109.(b)}

TABLE 1. CONFORMITY CRITERIA

All Actions at all times:	
20.11.3.110 NMAC	Latest planning assumptions
20.11.3.111 NMAC	Latest emissions model
20.11.3.112 NMAC	Consultation
Transportation Plan:	
Subsection B of 20.11.3.113 NMAC	TCMs.
20.11.3.118 or 20.11.3.119 NMAC	Emissions budget or interim emissions
TIP:	
Subsection C of 20.11.3.113 NMAC	TCMs.
20.11.3.118 or 20.11.3.119 NMAC	Emissions budget or interim emissions
Project (from a conforming plan and TIP):	
20.11.3.114 NMAC	Currently conforming plan and TIP
20.11.3.115 NMAC	Project from a conforming plan and TIP
20.11.3.116 NMAC	CO, PM_{10} and $PM_{2.5}$ hot-spots
20.11.3.117 NMAC	PM_{10} and $PM_{2.5}$ control measures
Project (Not From a Conforming Plan and TIP):	
Subsection D of 20.11.3.113 NMAC	TCMs.
20.11.3.114 NMAC	Currently conforming plan and TIP
20.11.3.116 NMAC	CO, PM_{10} and $PM_{2.5}$ hot-spots
20.11.3.117 NMAC	PM_{10} and $PM_{2.5}$ control measures
20.11.3.118 or 20.11.3.119 NMAC	Emissions budget or interim emissions

C. [~~1-hour ozone NAAQS nonattainment and maintenance areas~~] Regional conformity test requirement for all nonattainment and maintenance areas: [~~Subsection C of 20.11.3.109 NMAC applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e.~~] This provision applies one year after the effective date of EPA's nonattainment designation for a NAAQS in accordance with Subsection D of 20.11.3.2 NMAC and until the effective date of [~~any~~] revocation of [~~the 1-hour ozone~~] such NAAQS for an area [~~)~~]. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such ozone nonattainment and maintenance areas, conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:

(1) In all [~~1-hour ozone~~] nonattainment and maintenance areas for a NAAQS the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations for such NAAQS made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for [~~the 1-hour ozon~~e] such NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) [~~In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.~~] Prior to Paragraph 1 of Subsection C of 20.11.3.109 NMAC applying for a NAAQS,

in a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS of the same pollutant, the following tests must be satisfied:

(a) If the nonattainment area covers the same geographic area as another NAAQS of the same pollutant, the budget test as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

(b) If the nonattainment area covers a smaller geographic area within an area for another NAAQS of the same pollutant, the budget test as required by 20.11.3.118 NMAC for either:

(i) The nonattainment area, using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where such portion(s) can reasonably be identified through the interagency consultation process required by 20.11.3.105 NMAC; or

(ii) The area designated nonattainment for that other NAAQS, using the approved or adequate motor vehicle emissions budgets for that other NAAQS. If additional emissions reductions are necessary to meet the budget test for the nonattainment area for a NAAQS in such cases, these emissions reductions must come from within such nonattainment area;

(c) If the nonattainment area covers a larger geographic area and encompasses an entire area for another NAAQS of the same pollutant, then either Item (i) or (ii) of Subparagraph (c) of Paragraph (2) of Subsection C of 20.11.3.109 NMAC must be met:

(i) 1. The budget test as required by 20.11.3.118 NMAC for the portion of the nonattainment area covered by the approved or adequate motor vehicle emissions budgets for that other NAAQS; and 2. the interim emissions tests as required by 20.11.3.119 NMAC for one of the following areas: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multistate nonattainment or maintenance area.

(ii) The budget test as required by 20.11.3.118 NMAC for the entire nonattainment area using the approved or adequate motor vehicle emissions budgets for that other NAAQS.

(d) If the nonattainment area partially covers an area for another NAAQS of the same pollutant:

(i) The budget test as required by 20.11.3.118 NMAC for the portion of the nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where they can be reasonably identified through the interagency consultation process required by 20.11.3.105 NMAC; and

(ii) The interim emissions tests as required by 20.11.3.119 NMAC, when applicable, for either: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multistate nonattainment or maintenance area.

(3) In a nonattainment area, the interim emissions tests required by 20.11.3.119 NMAC must be satisfied for a NAAQS if neither Paragraph (1) nor paragraph (2) of Subsection C of 20.11.3.109 NMAC applies for such NAAQS.

[~~(3)~~](4) An ozone nonattainment area shall satisfy the interim emissions test for NO_x, as required by 20.11.3.119 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or [~~phase I attainment demonstration~~] other control strategy SIP that does not include a motor vehicle emissions budget for NO_x. The implementation plan for [~~the 1-hour ozone~~] an NAAQS shall be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in [~~1990~~] the SIP's baseline year.

[~~(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually marginal and below areas) shall satisfy one of the following requirements:~~

~~(a) the interim emissions tests required by 20.11.3.119 NMAC; or~~

~~(b) the state shall submit to EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by 20.11.3.118 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection C of 20.11.3.109 NMAC).~~]

(5) Notwithstanding [~~Paragraph (1) and Paragraph (2)~~] Paragraphs (1), (2) and (3) of Subsection C of 20.11.3.109 NMAC, [~~moderate and above ozone~~] nonattainment areas with [~~three years of~~] clean data for [~~the 1-hour ozone~~] NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for [~~the 1-hour ozone~~] that NAAQS shall satisfy one of the following requirements:

(a) the budget test or the interim emissions tests as required by 20.11.3.118 NMAC and 20.11.3.119 NMAC as described in Paragraph (2) and (3) or Subsection C of 20.11.3.109 NMAC;

(b) the budget test as required by 20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the [~~1-hour ozone~~] NAAQS for which the area is designated nonattainment (subject to the timing requirements of Paragraph (1) of Subsection C of 20.11.3.109 NMAC; or

(c) the budget test as required by 20.11.3.118 NMAC, using the motor vehicle emissions [~~of ozone precursors~~] in the most recent year of [~~clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 1-hour ozone NAAQS~~] attainment as motor vehicle emissions budgets, if the state or local air quality agency requests that the motor vehicle emissions in the most recent year of attainment be used as budgets, and EPA approves the request in conjunction with the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment.

(6) For the PM_{10} NAAQS only, the interim emissions tests must be satisfied as required by 20.11.3.119 NMAC for conformity determinations made if the submitted implementation plan revision for a PM_{10} nonattainment area is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment. { FR Vol. 77, No. 50, pp. 14979-88, 3/14/12, re: 40 CFR 93.109(c)}

D. [~~8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area~~] Hot-spot conformity test requirements for CO, $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas: [~~Subsection D of 20.11.3.109 NMAC applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS and areas that were designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. Subsection D of 20.11.3.109 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC.~~] This provision applies in accordance with Subsection D of 20.11.3.2 NMAC for a NAAQS and until the effective date of any revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, [~~in such 8-hour ozone~~] project-level conformity determinations in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas conformity determinations shall include a demonstration that the [~~budget or interim emissions tests~~] hot-spot tests for the applicable NAAQS are satisfied as described in the following:

~~[(1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, Part D, Subpart 1 areas), the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.~~

~~(3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_x, as required by 20.11.3.119 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002.~~

~~(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually marginal and certain Clean Air Act, Part D, Subpart 1 areas) shall satisfy one of the following requirements:~~

~~(a) the interim emissions tests required by 20.11.3.119 NMAC; or~~

~~(b) the state shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by 20.11.3.118 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) as described in Paragraph (1) of Subsection D of 20.11.3.109 NMAC.~~

~~(5) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection D of 20.11.3.109 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following requirements:~~

~~(a) the interim emissions tests as required by 20.11.3.119 NMAC;~~

~~(b) the budget test as required by 20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection D of 20.11.3.109 NMAC; or~~

~~(c) the budget test as required by 20.11.3.118 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.~~

~~**E. 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area:**~~ ~~Subsection E of 20.11.3.109 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following.~~

~~(1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(2) Prior to Paragraph (1) of Subsection E of 20.11.3.109 NMAC applying, the following test(s) shall be satisfied:~~

~~(a) if the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission;~~

~~(b) if the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC for either:~~

~~(i) the 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by 20.11.3.105 NMAC; or~~

~~(ii) the 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; if additional emissions reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions shall come from within the 8-hour nonattainment area;~~

~~(c) if the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire 1-hour ozone nonattainment or maintenance area(s):~~

~~(i) the budget test as required by 20.11.3.118 NMAC for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and~~

~~(ii) the interim emissions tests as required by 20.11.3.119 NMAC for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state of a multi-state 1-hour nonattainment or maintenance area;~~

~~(d) if the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s):~~

~~(i) the budget test as required by 20.11.3.118 NMAC for the portion of the 8-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by 20.11.3.105 NMAC; and~~

~~(ii) the interim emissions tests as required by 20.11.3.119 NMAC, when applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state 1-hour nonattainment or maintenance area.~~

~~(3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_x, as required by 20.11.3.119 NMAC, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002. Prior to an adequate or approved NO_x motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.~~

~~(4) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection E of 20.11.3.109 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following requirements:~~

~~(a) the budget test or interim emissions tests as required by 20.11.3.118 NMAC and 20.11.3.119 NMAC and as described in Paragraph (2) of Subsection E of 20.11.3.109 NMAC;~~

~~(b) the budget test as required by 20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection E of 20.11.3.109 NMAC; or~~

~~(c) the budget test as required by 20.11.3.118 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.~~

~~**F. CO nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget or emission reduction tests are satisfied as described in the following:]~~

(1) FHWA/FTA projects in CO nonattainment or maintenance areas shall satisfy the hot-spot test required by Subsection A of 20.11.3.116 NMAC at all times; until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects shall also satisfy the hot-spot test required by Subsection B of 20.11.3.116 NMAC;

~~[(2) in CO nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking;~~

~~(3) except as provided in Paragraph (4) of Subsection F of 20.11.3.109 NMAC, in CO nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan;~~

~~(4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g. moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) shall satisfy one of the following requirements:~~

~~(a) the interim emissions tests required by 20.11.3.119 NMAC; or~~

~~(b) the state shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 20.11.3.118 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (2) of Subsection F of 20.11.3.109 NMAC).~~

~~**G. PM_{10} nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in PM_{10} nonattainment and maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget or interim emissions tests are satisfied as described in the following:~~]

[~~(1)~~](2) FHWA/FTA projects in PM_{10} non-attainment or maintenance areas shall satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.

[~~(2) In PM_{10} nonattainment and maintenance areas where a budget is submitted for the 24-hour PM_{10} NAAQS, the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(3) Prior to Paragraph (2) of Subsection G of 20.11.3.109 NMAC applying, the budget test must be satisfied as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budget established for the revoked annual PM_{10} NAAQS, if such a budget exists.~~

~~(4) In PM_{10} nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made:~~

~~(a) if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan; or~~

~~(b) if the submitted implementation plan revision is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.~~

~~**H. NO_2 nonattainment and maintenance areas:** In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in NO_2 nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:~~

~~(1) In NO_2 nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(2) In NO_2 nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.~~

~~**I. 1997 $PM_{2.5}$ nonattainment and maintenance areas**: In addition to the criteria listed in Table 1 of Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in $PM_{2.5}$ nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:~~]

[~~(1)~~](3) FHWA/FTA projects in [~~such 1997~~] $PM_{2.5}$ nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC;

[~~(2) in such 1997 $PM_{2.5}$ nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking;~~

~~(3) in $PM_{2.5}$ nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.~~

~~**J. 2006 $PM_{2.5}$ NAAQS nonattainment and maintenance areas without 1997 $PM_{2.5}$ NAAQS motor vehicle emissions budgets for any portion of the 2006 $PM_{2.5}$ NAAQS area:** In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such 2006 $PM_{2.5}$ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget or interim emissions tests are satisfied as described in the following:~~

~~(1) FHWA/FTA projects in such $PM_{2.5}$ nonattainment and maintenance areas shall satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.~~

~~(2) In such $PM_{2.5}$ nonattainment and maintenance areas the budget test must be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(3) In such $PM_{2.5}$ nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan for the 2006 $PM_{2.5}$ NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS.~~

~~**K. 2006 $PM_{2.5}$ NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1997 $PM_{2.5}$ NAAQS that cover all or a portion of the 2006 $PM_{2.5}$ nonattainment area.** In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such 2006 $PM_{2.5}$ nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:~~

~~(1) FHWA/FTA projects in such $PM_{2.5}$ nonattainment and maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.~~

~~(2) In such $PM_{2.5}$ nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:~~

~~(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS is adequate for transportation conformity purposes;~~

~~(b) the publication date of EPA's approval of such a budget in the federal register; or~~

~~(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.~~

~~(3) Prior to Paragraph (2) of Subsection K of 20.11.3.109 NMAC applying, the following test(s) must be satisfied:~~

~~(a) if the 2006 $PM_{2.5}$ nonattainment area covers the same geographic area as the 1997 $PM_{2.5}$ nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission;~~

~~(b) if the 2006 $PM_{2.5}$ nonattainment area covers a smaller geographic area within the 1997 $PM_{2.5}$ nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC for either:~~

~~(i) the 2006 $PM_{2.5}$ nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by 20.11.3.105 NMAC; or~~

~~(ii) the 1997 $PM_{2.5}$ nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission; if additional emissions reductions are necessary to meet the budget test for the 2006 $PM_{2.5}$ NAAQS in such cases, these emissions reductions must come from within the 2006 $PM_{2.5}$ nonattainment area;~~

~~(c) if the 2006 $PM_{2.5}$ nonattainment area covers a larger geographic area and encompasses the entire 1997 $PM_{2.5}$ nonattainment or maintenance area(s):~~

~~(i) the budget test as required by 20.11.3.118 NMAC for the portion of the 2006 $PM_{2.5}$ nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission; and the interim emissions tests as required by 20.11.3.119 NMAC for either: the portion of the 2006 $PM_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 $PM_{2.5}$ implementation plan, the entire 2006 $PM_{2.5}$ nonattainment area, or the entire portion of the 2006 $PM_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 $PM_{2.5}$ SIP budgets are established for each state of a multi-state 1997 $PM_{2.5}$ nonattainment or maintenance area; or~~

~~(ii) the budget test as required by 20.11.3.118 NMAC for the entire 2006 $PM_{2.5}$ nonattainment area using the approved or adequate motor vehicle emissions budgets in the applicable 1997 $PM_{2.5}$ implementation plan or implementation plan submission;~~

~~(d) if the 2006 $PM_{2.5}$ nonattainment area partially covers a 1997 $PM_{2.5}$ nonattainment or maintenance area(s):~~

~~(i) the budget test as required by 20.11.3.118 NMAC for the portion of the 2006 $PM_{2.5}$ nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by 20.11.3.105 NMAC; and~~

~~(ii) the interim emissions tests as required by 20.11.3.119 NMAC, when applicable, for either: the portion of the 2006 $PM_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 $PM_{2.5}$ implementation plan, the entire 2006 $PM_{2.5}$ nonattainment area, or the entire portion of the 2006 $PM_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 $PM_{2.5}$ SIP budgets are established for each state in a multi-state 1997 $PM_{2.5}$ nonattainment or maintenance area.~~] { FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.109.(d)}

[~~L.~~]E. **Areas with limited maintenance plans**: Notwithstanding the other subsections of 20.11.3.109 NMAC, an area is not required to satisfy the regional emissions analysis for 20.11.3.118 NMAC or 20.11.3.119 NMAC for a given pollutant and NAAQS if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of Subsection B of 20.11.3.109 NMAC is still required, including the hot-spot requirements for projects in CO PM_{10} and $PM_{2.5}$ areas. { FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.109.(e)}

[~~M.~~]F **Areas with insignificant motor vehicle emissions**: Notwithstanding the other subsections of 20.11.3.109 NMAC, an area is not required to satisfy a regional emissions analysis for 20.11.3.118 NMAC or 20.11.3.119 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that

meets other applicable criteria in Table 1 in Subsection B of 20.11.3.109 NMAC is still required, including regional emissions analyses for 20.11.3.118 NMAC or 20.11.3.119 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, PM_{10} and $PM_{2.5}$ areas in 20.11.3.116 NMAC shall also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS. { FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.109.(f)}

[~~N.~~]**G.** **Isolated rural non-attainment and maintenance areas**: This subsection applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of 20.11.3.110 NMAC, 20.11.3.111 NMAC, 20.11.3.112 NMAC, 20.11.3.116 NMAC, 20.11.3.117 NMAC and Subsection D of 20.11.3.113 NMAC. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects shall also satisfy the requirements of Subsection B of 20.11.3.116 NMAC.

(2) Isolated rural nonattainment and maintenance areas are subject to the budget or interim emissions tests as described in [~~Subsections C through K~~] Subsection C of 20.11.3.109 NMAC, with the following modifications:

(a) When the requirements of Subsection D of 20.11.3.106 NMAC, 20.11.3.116 NMAC, 20.11.3.118 NMAC and 20.11.3.119 NMAC apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP that are in the rural nonattainment or maintenance area. When the requirements of Subsection D of 20.11.3.106 NMAC apply to isolated rural nonattainment and maintenance areas, references to "MPO" shall be taken to mean the state department of transportation.

(b) In isolated rural nonattainment and maintenance areas that are subject to 20.11.3.118 NMAC, FHWA/FTA projects shall be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects shall satisfy one of the following requirements:

(i) 20.11.3.118 NMAC;

(ii) 20.11.3.119 NMAC (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.11.3.119 NMAC);

(iii) as demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, shall not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; control measures assumed in the analysis shall be enforceable.

(c) The choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection [~~N~~] G of 20.11.3.109 NMAC and the methodology used to meet the requirements of Item (iii) of Subparagraph (b) of Paragraph (2) of Subsection [~~N~~] G of 20.11.3.109 NMAC shall be determined through the interagency consultation process required in Subparagraph (h) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC through which the relevant recipients of Title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the state air quality agency and the state DOT shall reach consensus about the option and methodology selected. EPA and DOT shall be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in Subsection E of 20.11.3.105 NMAC, which applies for any state air agency comments on a conformity determination. {FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.109(g)}

[20.11.3.109 NMAC - Rn & A, 20.11.3.206 NMAC, 11/15/10]

20.11.3.110 CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS:

A. Except as provided in Subsection A of 20.11.3.110 NMAC, the conformity determination, with respect to all other applicable criteria in 20.11.3.111 NMAC through 20.11.3.119 NMAC, shall be based upon the

most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination shall satisfy the requirements of Subsections B through F of 20.11.3.110 NMAC using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.105 NMAC. The "time the conformity analysis begins" for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through the interagency consultation procedures described in 20.11.3.105 NMAC.

B. Assumptions shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC. The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

C. The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

D. The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

E. The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures that have already been implemented. This information shall be made as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by 20.11.3.105 NMAC.

[20.11.3.110 NMAC - Rn & A, 20.11.3.207 NMAC, 11/15/10]

20.11.3.111 CRITERIA AND PROCEDURES: LATEST EMISSIONS MODEL:

A. The conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans for Bernalillo county is used for the conformity analysis. When options are allowed by EPA, the TCTC, as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC, shall be responsible for determining the most appropriate emission estimation model to be used.

B. EPA shall consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period shall be no less than three months and no more than 24 months after notice of availability is published in the federal register.

(2) The length of the grace period shall depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period shall be longer than three months, EPA shall announce the appropriate grace period in the federal register.

C. Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the federal register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analyses were begun during the grace period or before the federal register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

[20.11.3.111 NMAC - Rn & A, 20.11.3.208 NMAC, 11/15/10]

20.11.3.112 CRITERIA AND PROCEDURES: CONSULTATION: Conformity shall be determined according to the consultation procedures in 20.11.3 NMAC and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR Part 450. Until the

implementation plan revision required by 40 CFR 51.390 is fully approved by EPA, the conformity determination shall be made according to Subsection A and Subsection F of 20.11.3.105 NMAC and the requirements of 23 CFR Part 450.
[20.11.3.112 NMAC - Rn & A, 20.11.3.209 NMAC, 11/15/10]

20.11.3.113 CRITERIA AND PROCEDURES: TIMELY IMPLEMENTATIONS OF TCMS:

A. The transportation plan, TIP or any FHWA/FTA project, which is not from a conforming plan and TIP, shall provide for the timely implementation of TCMs from the applicable implementation plan.

B. For transportation plans, this criterion is satisfied if the following two conditions are met.

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan, which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

C. For TIPs, this criterion is satisfied if the following conditions are met.

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for federal funding intended for air quality improvement projects, e.g., the congestion mitigation and air quality improvement program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

D. For FHWA/FTA projects that are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.
[20.11.3.113 NMAC - Rn, 20.11.3.210 NMAC, 11/15/10]

20.11.3.114 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP: There shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval, or a project must meet the requirements in Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period.

A. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP shall also lapse if conformity is not determined according to the frequency requirements specified in 20.11.3.104 NMAC.

B. This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of 20.11.3 NMAC are satisfied.
[20.11.3.114 NMAC - Rn & A, 20.11.3.211 NMAC, 11/15/10]

20.11.3.115 CRITERIA AND PROCEDURES: PROJECTS FROM A TRANSPORTATION PLAN AND TIP:

A. The project shall come from a conforming plan and program: If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of Subsection B of 20.11.3.109 NMAC for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of Subsection B of 20.11.3.115 NMAC and from a conforming program if it meets the

requirements of Subsection C of 20.11.3.115 NMAC. Special provisions for TCMs in an applicable implementation plan are provided in Subsection D of 20.11.3.115 NMAC.

B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) for projects that are required to be identified in the transportation plan in order to satisfy 20.11.3.106 NMAC (content of transportation plans), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) for projects that are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and shall not interfere with other projects specifically included in the transportation plan.

C. A project is considered to be from a conforming program if the following conditions are met:

(1) the project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those that were described in the TIP; and

(2) if the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures shall be obtained from the project sponsor or operator as required by Subsection A of 20.11.3.125 NMAC in order for the project to be considered from a conforming program; any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

D. TCMs: This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

E. Notwithstanding the requirements of Subsections A, B and C of 20.11.3.115 NMAC, a project shall meet the requirements of Subsection F of 20.11.3.104 during the 12-month lapse grace period.

[20.11.3.115 NMAC - Rn & A, 20.11.3.212 NMAC, 11/15/10]

20.11.3.116 CRITERIA AND PROCEDURES: LOCALIZED CO, PM_{10} AND $PM_{2.5}$ VIOLATIONS (hot-spots):

A. Subsection A of 20.11.3.116 NMAC applies at all times. The FHWA/FTA project shall not cause or contribute to any new localized CO, PM_{10} or $PM_{2.5}$ violations or increase the frequency or severity of any existing CO, PM_{10} or $PM_{2.5}$ violations, or delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas for FHWA/FTA projects that are not identified in Paragraph (1) of Subsection B of 20.11.3.123 NMAC. This criterion is satisfied for all other FHWA/FTA projects in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project, and the project has been included in a regional emissions analysis that meets applicable 20.11.3.118 NMAC or 20.11.3.119 NMAC requirements. The demonstration shall be performed according to the consultation requirements of Paragraph (1) of Subsection D of 20.11.3.105 NMAC and the methodology requirements of 20.11.3.123 NMAC.

B. Subsection B of 20.11.3.116 NMAC applies for CO nonattainment areas as described in Paragraph (1) of Subsection [~~F~~]D of 20.11.3.109 NMAC. Each FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations shall be eliminated or reduced in severity and number as a result of the project. The demonstration shall be performed according to the consultation requirements of Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC and the methodology requirements of 20.11.3.123 NMAC.

[20.11.3.116 NMAC - Rn & A, 20.11.3.213 NMAC, 11/15/10]

20.11.3.117 CRITERIA AND PROCEDURES: COMPLIANCE WITH PM_{10} and $PM_{2.5}$ CONTROL MEASURES: The FHWA/FTA project shall comply with any PM_{10} and $PM_{2.5}$ control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications and estimates for the project those

control measures (for the purpose of limiting PM_{10} and $PM_{2.5}$ emissions from the construction activities or normal use and operation associated with the project) that are contained in the applicable implementation plan.
[20.11.3.117 NMAC - Rn, 20.11.3.214 NMAC, 11/15/10]

20.11.3.118 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET:

A. The transportation plan, TIP and project not from a conforming transportation plan and TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in Subsections C through [~~N~~]G of 20.11.3.109 NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in Subsection C of 20.11.3.118 NMAC are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

B. Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each year for which the applicable (or submitted) implementation plan specifically establishes a motor vehicle emissions budget(s), [~~for the attainment year (if it is within the timeframe of the transportation plan and conformity determination), for the last year of the timeframe of the conformity determination (as described under Subsection D of 20.11.3.106 NMAC), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than 10 years apart,~~] and for each year for which a regional emissions analysis is performed to fulfill the requirements in Subsection D of 20.11.3.118 NMAC, as follows: {FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.118(a) & (b)}

(1) **Until a maintenance plan is submitted:**

(a) emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) shall be less than or equal to that years motor vehicle emissions budget(s); and

(b) emissions in years for which no motor vehicle emissions budget(s) are specifically established shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year; for example, emissions in years after the attainment year for which the implementation plan does not establish a budget shall be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) **When a maintenance plan has been submitted:**

(a) emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emission budget(s) shall be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the interagency consultation process required by 20.11.3.105 NMAC shall determine what shall be considered in order to make such a finding;

(b) for years after the last year of the maintenance plan, emissions shall be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

(c) if an approved or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years shall be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

(d) for any analysis years before the last year of the maintenance plan, emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

C. Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each pollutant or pollutant precursor in Subsection B of 20.11.3.2 NMAC for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

D. Consistency with the motor vehicle emissions budget(s) shall be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) shall be demonstrated with a regional emissions analysis that meets the requirements of 20.11.3.122 NMAC and Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(2) The regional emissions analysis may be performed for any years in the time frame of the conformity determination (as described under Subsection D of 20.11.3.106 NMAC) provided they are not more than 10 years apart and provided the analysis is performed for the attainment year (if it is in the time frame of the transportation plan and conformity determination) and the last year of the time frame of the conformity determination. Emissions in years for which consistency with motor vehicle emissions budgets shall be demonstrated, as required in Subsection B of 20.11.3.118 NMAC, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(3) When the time frame of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.11.3.106 NMAC, the conformity determination shall be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the time frame of the conformity determination).

E. Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans:

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans shall be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes and the adequacy finding is effective. However, motor vehicle emission budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of 20.11.3.118 NMAC. Consistency with the previously established motor vehicle emissions budget(s) shall be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emission tests required by 20.11.3.119 NMAC shall be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination shall remain valid. Projects included in that transportation plan or TIP could still satisfy 20.11.3.114 NMAC and 20.11.3.115 NMAC, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA shall not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(a) the submitted control strategy implementation plan revision or maintenance plan was endorsed by the governor (or his designee) and was subject to a state public hearing;

(b) before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, state and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(c) the motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(d) the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment or maintenance (whichever is relevant to the given implementation plan submission);

(e) the motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(f) revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 20.11.3.7 NMAC for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA shall review the state's compilation of public comments and response to comments that are required to be submitted with

any implementation plan. EPA shall document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of 20.11.3.118 NMAC are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations shall be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget shall cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

F. Adequacy review process for implementation plan submissions: EPA will use the procedure listed in Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.118 NMAC to review the adequacy of an implementation plan submission:

(1) When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan,

(a) EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy;

(b) the public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission; if the complete implementation plan is not accessible electronically through the internet and a copy is requested within 15 days of the date of the website notice, the comment period will be extended for 30 days from the date that a copy of the implementation plan is mailed;

(c) after the public comment period closes, EPA will inform the state in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the state process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under Subparagraph (c) of Paragraph (2) of Subsection F of 20.11.3.118 NMAC;

(d) EPA will publish a federal register notice to inform the public of EPA's finding; if EPA finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published as established in the federal register notice, unless EPA is taking a final approval action on the SIP as described in Subparagraph (c) of Paragraph (2) of Subsection F of 20.11.3.118 NMAC;

(e) EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website; the website will also include EPA's response to comments if any comments were received during the public comment period;

(f) if after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.118 NMAC unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission; in all cases where EPA reverses its previous finding to a finding of inadequacy under Paragraph (1) of Subsection F of 20.11.3.118 NMAC, such a finding will become effective immediately upon the date of EPA's letter to the state;

(g) if after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.118 NMAC.

(2) When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan,

(a) EPA's federal register notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy;

(b) the publication of the notice of proposed rulemaking will start a public comment period of at least 30 days;

(c) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in Subparagraphs (c) through (e) of Paragraphs (1) of Subsection F of 20.11.3.118 NMAC; if EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the federal register, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking; EPA will respond to comments received directly and review comments submitted through the state process and include the response to comments in the applicable docket.

[20.11.3.118 NMAC - Rn & A, 20.11.3.215 NMAC, 11/15/10]

20.11.3.119 CRITERIA AND PROCEDURES: INTERIM EMISSIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS:

A. The transportation plan, TIP and project not from a conforming transportation plan and TIP shall satisfy the interim emissions test(s) as described in Subsections C through [~~N~~]G of 20.11.3.109 NMAC. This criterion applies to the net effect of the action (transportation plan, TIP or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system. {FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.119(a)

B. Ozone areas: The requirements of Subsection B of 20.11.3.119 NMAC apply to all [~~1-hour ozone and 8-hour ozone~~] NAAQS areas, except for certain requirements as indicated. This criterion may be met:

(1) in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC by any nonzero amount [~~:~~

~~(i) 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as described in Subsection C of 20.11.3.109 NMAC; or~~

~~(ii) 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in Subsection D and Subsection E of 20.11.3.109 NMAC~~];

(2) in marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC by any nonzero amount [~~:~~

~~(i) 1990 emissions, in areas for the 1-hour ozone NAAQS as described in Subsection C of 20.11.3.109 NMAC; or~~

~~(ii) 2002 emissions, in areas for the 8-hour ozone NAAQS as described in Subsection D and Subsection E of 20.11.3.109 NMAC~~]. {FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.119(b)}

C. CO areas: This criterion may be met:

(1) in moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA Section 187(a)(7) if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than 1990 emissions by any nonzero amount;

(2) in moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than [~~1990~~] emissions. {FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.119(c)}

D. $PM_{2.5}$, PM_{10} and NO_2 areas: This criterion may be met in $PM_{2.5}$, PM_{10} and NO_2 nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G

through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC, one of the following requirements is met:

(1) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) the emissions predicted in the "action" scenario are not greater than [~~baseline~~] emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC by any nonzero amount; baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan. { FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.119(d)}

E. **[~~$PM_{2.5}$ areas~~] Baseline year for various NAAQS:** [~~This criterion may be met in $PM_{2.5}$ nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC, one of the following requirements is met~~] The baseline year is defined as follows:

(1) [~~the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or~~] 1990, in areas designated nonattainment for the 1990 CO NAAQS or the 1990 NO_2 NAAQS.

(2) [~~the emissions predicted in the "action" scenario are not greater than:~~] 1990, in areas designated nonattainment for the 1990 PM_{10} NAAQS, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(3) [~~(a)~~] 2002 [~~emissions~~], in areas designated nonattainment for the 1997 ozone NAAQS or 1997 $PM_{2.5}$ NAAQS.[~~; or~~]

(4) [~~(b) emissions in~~] the most recent year for which EPA's Air Emissions Reporting [~~Requirements~~] Rule (40 CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories, as of the effective date of [~~nonattainment~~] designations [~~for any $PM_{2.5}$ NAAQS other than the 1997 $PM_{2.5}$ NAAQS~~] in areas designated nonattainment for a NAAQS that is promulgated after 1997. {FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.119(e)}

F. **Pollutants:** The regional emissions analysis shall be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NO_x in ozone areas, unless the EPA administrator determines that additional reductions of NO_x would not contribute to attainment;

(3) CO in CO areas;

(4) PM_{10} in PM_{10} areas;

(5) VOC and NO_x in PM_{10} areas if the EPA regional administrator or the director of the air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT;

(6) NO_x in NO_2 areas;

(7) $PM_{2.5}$ in $PM_{2.5}$ areas;

(8) re-entrained road dust in $PM_{2.5}$ areas only if the EPA regional administrator or the director of the air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT;

(9) NO_x in $PM_{2.5}$ areas, unless the EPA regional administrator and the director of the state air agency have made a finding that emissions of NO_x from within the area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT; and

(10) VOC, SO_2 and ammonia in $PM_{2.5}$ areas if the EPA regional administrator or the director of the state air agency has made a finding that any of such precursor emissions from within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT.

G. **Analysis Years:**

(1) The regional emissions analysis shall be performed for analysis years that are no more than 10 years apart. The first analysis year shall be no more than five years beyond the year in which the conformity determination is being made. The last year of the time frame of the conformity determination (as described under Subsection D of 20.11.3.106 NMAC) shall also be an analysis year.

(2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B, Subparagraph (a) of Paragraph (2) of Subsection C, and Paragraph (1) of Subsection D [~~and Paragraph (1) of Subsection E~~] of

20.11.3.119 NMAC, a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC would not be required for analysis years in which the transportation projects and planning assumptions in the action and "baseline" scenarios are exactly the same. In such a case, Subsection A of 20.11.3.119 NMAC can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario for such analysis years. {FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.119(g)(2)}

(3) When the time frame of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.11.3.106 NMAC, the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

H. "Baseline" scenario: The regional emissions analysis required by Subsections B through E of 20.11.3.119 NMAC shall estimate the emissions that would result from the "baseline" scenario in each analysis year. The "baseline" scenario shall be defined for each of the analysis years. The "baseline" scenario is the future transportation system that shall result from current programs; including the following (except that exempt projects list in 20.11.3.126 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.127 NMAC need not be explicitly considered):

(1) all in-place regionally significant highway and transit facilities, services and activities;

(2) all ongoing travel demand management or transportation system management activities; and

(3) completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan or TIP; or have completed the NEPA process.

I. "Action" scenario: The regional emissions analysis required by Subsections B through E of 20.11.3.119 NMAC shall estimate the emissions that would result from the "action" scenario in each analysis year. The "action" scenario shall be defined for each of the analysis years. The "action" scenario is the transportation system that would result from the implementation of the proposed action (MTP, TIP or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "action" scenario shall include the following (except that exempt projects listed in 20.11.3.126 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.127 NMAC need not be explicitly considered):

(1) all facilities, services and activities in the "baseline" scenario;

(2) completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which shall be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) all travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) the incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

J. Projects not from a conforming transportation plan and TIP: For the regional emissions analysis required by Subsections B through E of 20.11.3.119 NMAC, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario shall include the project with its original design concept and scope, and the "action" scenario shall include the project with its new design concept and scope.

[20.11.3.119 NMAC - Rn & A, 20.11.3.216 NMAC, 11/15/10]

20.11.3.120 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES:

A. Disapprovals:

(1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under Section 179(b)(1) of the CAA. No new transportation plan, TIP or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP or project not in the first four years of the currently conforming transportation plan and TIP or that meets the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to 20.11.3.118 NMAC or approves the submission, and conformity to the implementation plan revision is determined.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

B. Failure to submit and incompleteness: In areas where EPA notifies the state, MPO and DOT of the state's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA Sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under Section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA regional administrator.

C. Federal implementation plans: If EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by 20.11.3.120 NMAC because of that failure is removed.

[20.11.3.120 NMAC - Rn & A, 20.11.3.217 NMAC, 11/15/10]

20.11.3.121 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS.

A. Except as provided in Subsection B of 20.11.3.121 NMAC, no recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project comes from the currently conforming transportation plan and TIP (or meets the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

(2) the project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period), even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

(3) a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of 20.11.3.118 NMAC or 20.11.3.119 NMAC for a project not from a conforming transportation plan and TIP).

B. In isolated rural nonattainment and maintenance areas subject to Subsection ~~[N]~~ G of 20.11.3.109 NMAC, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly; or

(2) a new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements 20.11.3.118 NMAC or 20.11.3.119 NMAC for projects not from a conforming transportation plan and TIP). { FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.121(b)}

C. Notwithstanding Subsection A and Subsection B of 20.11.3.121 NMAC, in nonattainment and maintenance areas subject to Subsection [~~L~~] E or Subsection [~~M~~] F of 20.11.3.109 NMAC for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met for that pollutant/precursor and NAAQS:

(1) the project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

(2) the project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly. {FR Vol. 77, No. 50, pp. 14979-88, 3/14/12 re: 40 CFR 93.121(c)}

[20.11.3.121 NMAC - Rn & A, 20.11.3.218 NMAC, 11/15/10]

20.11.3.122 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS:

A. General requirements:

(1) The regional emissions analysis required by 20.11.3.118 NMAC and 20.11.3.119 NMAC for the transportation plan, TIP or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by 20.11.3.105 NMAC. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects shall be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(a) the regulatory action is already adopted by the enforcing jurisdiction;

(b) the project, program or activity is included in the applicable implementation plan;

(c) the control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of 20.11.3.118 NMAC contains a written commitment to the project, program or activity by the agency with authority to implement it; or

(d) EPA has approved an opt-in to a federally enforced program, EPA has promulgated the program (if the control program is a federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date or not implement the program.

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions

analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(a) Persons or entities voluntarily committing to control measures shall comply with the obligations of such commitments.

(b) The conformity implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to control measures that are not included in the transportation plan and TIP shall be obtained prior to a conformity determination and that such commitments shall be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of 20.11.3.119 NMAC shall make the same assumptions in both the baseline and "action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, shall be consistent with the applicable implementation plan, unless modified after interagency consultation according to Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

B. Regional emissions analysis in serious, severe and extreme ozone nonattainment areas and serious CO nonattainment areas shall meet the requirements of Paragraphs (1) through (3) of Subsection B of 20.11.3.122 NMAC if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations shall be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods and practices are available from DOT and shall be updated periodically. Agencies shall discuss these modeling procedures and practices through the interagency consultation process as required by Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC. Network-based travel models shall at a minimum satisfy the following requirements:

(a) network-based travel models shall be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination; model forecasts shall be analyzed for reasonableness and compared to historical trends and other factors, and the results shall be documented;

(b) land use, population, employment and other network-based travel model assumptions shall be documented and based on the best available information; future speeds shall be determined through interagency consultation as described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC;

(c) scenarios of land development and use shall be consistent with the future transportation system alternatives for which emissions are being estimated; the distribution of employment and residences for different transportation options shall be reasonable;

(d) a capacity-sensitive assignment methodology shall be used, and emissions estimates shall be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(e) zone-to-zone travel impedances used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes and shall be determined through interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC; where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times shall also be used for modeling mode splits; and

(f) network-based travel models shall be reasonably sensitive to changes in the time(s), cost(s) and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.

(3) Highway performance monitoring system (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and

for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration shall be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

C. Two-year grace period for regional emissions analysis requirements in certain ozone and CO areas: The requirements of Subsection B of 20.11.3.122 NMAC apply to such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two years from the following:

(1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) the official notice by the census bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or

(3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

D. In all areas not otherwise subject to Subsection B of 20.11.3.122 NMAC, regional emissions analyses shall use those procedures described in Subsection B of 20.11.3.122 NMAC if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to Subsection B of 20.11.3.122 NMAC may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods shall also consider future economic activity, transit alternatives and transportation system policies.

E. PM_{10} from construction-related fugitive dust:

(1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans that identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan and the dust-producing capacity of the proposed activities.

F. $PM_{2.5}$ from construction-related fugitive dust:

(1) For $PM_{2.5}$ areas in which the implementation plan does not identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the fugitive $PM_{2.5}$ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In $PM_{2.5}$ nonattainment and maintenance areas with implementation plans that identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the regional $PM_{2.5}$ emissions analysis shall consider construction-related fugitive $PM_{2.5}$ and shall account for the level of construction activity, the fugitive $PM_{2.5}$ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

G. Reliance on previous regional emissions analysis:

(1) Conformity determinations for a new transportation plan or TIP may be demonstrated to satisfy the requirements of 20.11.3.118 NMAC, *Criteria and Procedures: Motor Vehicle Emissions Budget*, or 20.11.3.119 NMAC, *Criteria and Procedures: Interim Emissions in Areas Without Motor Vehicle Emissions Budgets*, without new regional emissions analysis if the previous regional emissions analysis also applies to the new plan or TIP. This requires a demonstration that:

(a) the new plan or TIP contains all projects that shall be started in the TIP's time frame in order to achieve the highway and transit system envisioned by the transportation plan;

(b) all plan and TIP projects that are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's or TIP's regional emissions at the time of the previous conformity determination;

(c) the design concept and scope of each regionally significant project in the new plan or TIP are not significantly different from that described in the previous transportation plan; and

(d) the previous regional emissions analysis is consistent with the requirements of 20.11.3.118 NMAC (including that conformity to all currently applicable budgets is demonstrated) or 20.11.3.119 NMAC, as applicable.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of 20.11.3.118 NMAC or 20.11.3.119 NMAC without additional regional emissions analysis if allocating funds to the project shall not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan the previous regional emissions analysis is still consistent with the requirements of 20.11.3.118 NMAC (including that conformity to all currently applicable budgets is demonstrated) or 20.11.3.119 NMAC, as applicable, and if the project is either:

(a) not regionally significant; or

(b) included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

(3) A conformity determination that relies on Subsection G of 20.11.3.122 NMAC does not satisfy the frequency requirements of Subsection B or Subsection C of 20.11.3.104 NMAC.

[20.11.3.122 NMAC - Rn & A, 20.11.3.219 NMAC, 11/15/10]

20.11.3.123 PROCEDURES FOR DETERMINING LOCALIZED CO, PM_{10} AND $PM_{2.5}$ CONCENTRATIONS (Hot-Spot Analysis):

A. CO hot spot analysis:

(1) The demonstrations required by 20.11.3.116 NMAC (Criteria and Procedures: Localized CO, PM_{10} and $PM_{2.5}$ Violations) shall be based on quantitative analysis using the applicable air quality models, data bases and other requirements specified in 40 CFR Part 51, Appendix W (guideline on air quality models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in 20.11.3.105 NMAC and approved by the EPA regional administrator are used for:

(a) projects in or affecting locations, areas or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

(b) projects affecting intersections that are at level-of-service D, E or F, or those that shall change to level-of-service D, E or F because of increased traffic volumes related to the project;

(c) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC; and

(d) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(2) In cases other than those described in Paragraph (1) of Subsection A of 20.11.3.123 NMAC, the demonstrations required by 20.11.3.116 NMAC may be based on either:

(a) quantitative methods that represent reasonable and common professional practice as determined through the interagency consultation process, described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC; or

(b) a qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of 20.11.3.116 NMAC are met.

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that Subsection A of 20.11.3.116 NMAC is met without further hot-spot analysis for any project described in Paragraphs (1) and (2) of Subsection A of 20.11.3.123 NMAC based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given CO nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

B. PM_{10} and $PM_{2.5}$ hot-spot analyses:

(1) The hot-spot demonstration required by 20.11.3.116 NMAC shall be based on quantitative analysis methods for the following types of projects:

(a) new highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;

(b) projects affecting intersections that are at level-of-service D, E, or F with a significant number of diesel vehicles, or those that will change to level-of-service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;

(c) new bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;

(d) expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and

(e) projects in or affecting locations, areas, or categories of sites which are identified in the PM_{10} or $PM_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

(2) Where quantitative analysis methods are not available, the demonstration required by 20.11.3.116 NMAC for projects described in Paragraph (1) of Subsection B of 20.11.3.123 NMAC shall be based on a qualitative consideration of local factors.

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that 20.11.3.116 NMAC is met without further hot-spot analysis for any project described in Paragraph (1) of Subsection B of 20.11.3.123 NMAC based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given $PM_{2.5}$ or PM_{10} nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

(4) The requirements for quantitative analysis contained in Subsection B of 20.11.3.123 NMAC shall not take effect until EPA releases modeling guidance on this subject and announces in the federal register that these requirements are in effect.

C. General requirements:

(1) Estimated pollutant concentrations shall be based on the total emissions burden that may result from the implementation of the project, summed together with future background concentrations. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses shall include the entire project, and may be performed only after the major design features that shall significantly impact concentrations have been identified. The future background concentration shall be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors as determined through the interagency consultation process described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(3) Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses as determined through the interagency consultation process described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(4) CO, PM_{10} or $PM_{2.5}$ mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor or operator to implement such measures, as required by Subsection A of 20.11.3.125 NMAC.

(5) CO, PM_{10} and $PM_{2.5}$ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site that is affected by construction-related activities shall be considered separately through the interagency consultation process described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC, using established guideline methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

[20.11.3.123 NMAC - Rn & A, 20.11.3.220 NMAC, 11/15/10]

20.11.3.124 USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE APPLICABLE IMPLEMENTATION PLAN (OR IMPLEMENTATION PLAN SUBMISSION):

A. In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment or maintenance requirement and explicitly states an intent that some or all of this additional amount shall be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) emissions from all sources shall be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) emissions from all sources shall result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year shall be lower than needed to demonstrate attainment; or

(3) emissions shall be lower than needed to provide for continued maintenance.

B. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.

C. If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

D. If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs shall collectively make a conformity determination for the entire nonattainment area.

[20.11.3.124 NMAC - Rn, 20.11.3.221 NMAC, 11/15/10]

20.11.3.125 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES:

A. Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA or FTA shall obtain from the project sponsor or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures that are identified as conditions for NEPA process completion with respect to local $PM_{10,}$ $PM_{2.5}$ or CO impacts. Before a conformity determination is made, written commitments shall also be obtained for project-level mitigation or control measures that are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by 20.11.3.118 NMAC (motor vehicle emissions budget) and 20.11.3.119 NMAC (interim emissions in areas without motor vehicle emissions budgets) or used in the project-level hot-spot analysis required by 20.11.3.116 NMAC.

B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of such commitments.

C. The implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to mitigation measures shall be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

D. If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of 20.11.3.116 NMAC, emission budget requirements of 20.11.3.118 NMAC, and interim emissions requirements of 20.11.3.119 NMAC are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 20.11.3.105 NMAC. The MPO and DOT shall find that the transportation plan and TIP still satisfy the applicable requirements of 20.11.3.118 NMAC or 20.11.3.119 NMAC and that the project still satisfies the requirements of 20.11.3.116 NMAC, and therefore that the conformity determinations for the transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in Subsection F of 20.11.3.105 NMAC for conformity determinations for projects.

[20.11.3.125 NMAC - Rn & A, 20.11.3.222 NMAC, 11/15/10]

20.11.3.126 EXEMPT PROJECTS: Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 2 of 20.11.3.126 NMAC are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of 20.11.3.126 NMAC is not exempt if the MPO in consultation with other agencies (see Subparagraph (c) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

TABLE 2. EXEMPT PROJECTS

SAFETY

Railroad/highway crossing
Projects that correct, improve or eliminate a hazardous location or feature
Safer non-federal-aid system roads
Shoulder improvements
Increasing sight distance
Highway safety improvement program implementation
Traffic control devices and operating assistance other than signalization projects
Railroad/highway crossing warning devices
Guardrails, median barriers, crash cushions
Pavement resurfacing or rehabilitation
Pavement marking
Emergency relief (23 U.S.C. 125)
Fencing
Skid treatments
Safety roadside rest areas
Adding medians
Truck climbing lanes outside the urbanized area
Lighting improvements
Widening narrow pavements or reconstructing bridges (no additional travel lanes)
Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies
Purchase of support vehicles
Rehabilitation of transit vehicles[1]
Purchase of office, shop and operating equipment for existing facilities
Purchase of operating equipment for vehicles (e.g., radios, fare boxes, lifts, etc.)
Construction or renovation of power, signal and communications systems
Construction of small passenger shelters and information kiosks
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals and ancillary structures)
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet[1]
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771

AIR QUALITY

Continuation of ride-sharing and van-pooling promotion activities at current levels
Bicycle and pedestrian facilities

OTHER

Specific activities which do not involve or lead directly to construction, such as:
Planning and technical studies
Grants for training and research programs
Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
Federal-aid systems revisions
Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action
Noise attenuation
Emergency or hardship advance land acquisitions 23 CFR Part 710.503
Acquisition of scenic easements
Plantings, landscaping, etc.
Sign removal
Directional and informational signs
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures or facilities)
Repair of damage caused by natural disasters, civil unrest or terrorist acts, except projects involving substantial functional, locational or capacity changes

Note: [1]In PM_{10} and $PM_{2.5}$ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.
[20.11.3.126 NMAC - Rn & A, 20.11.3.223 NMAC, 11/15/10]

20.11.3.127 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES: Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 3 of 20.11.3.127 NMAC are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO, $PM_{2.5}$ or PM_{10} concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of 20.11.3.127 NMAC is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Subparagraph (c) Paragraph (1) of Subsection D of 20.11.3.105 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

TABLE 3. PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES
Intersection channelization projects
Intersection signalization projects at individual intersections
Interchange reconfiguration projects
Changes in vertical and horizontal alignment
Truck size and weight inspection stations
Bus terminals and transfer points
[20.11.3.127 NMAC - Rn & A, 20.11.3.224 NMAC, 11/15/10]

20.11.3.128 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS: Traffic signal synchronization projects may be approved, funded and implemented without satisfying the requirements of 20.11.3 NMAC. However, all subsequent regional emissions analyses required by 20.11.3.118 NMAC and 20.11.3.119 NMAC for transportation plans, TIPs or projects not from a conforming plan and TIP shall include such regionally significant traffic signal synchronization projects.
[20.11.3.128 NMAC - Rn & A, 20.11.3.225 NMAC, 11/15/10]

20.11.3.129 SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR PILOT PROGRAM AREAS: EPA and DOT may exempt no more than six areas for no more than three years from certain requirements of 20.11.3 NMAC if these areas are selected to participate in a conformity pilot program and have developed alternative requirements that have been approved by EPA as an implementation plan revision in accordance with 40 CFR 51.390. For the duration of the pilot program, areas selected to participate in the pilot program shall comply with the conformity requirements of the pilot area's implementation plan revision for 40 CFR 51.390 and all other requirements in 40 CFR parts 51 and 93 that are not covered by the pilot area's implementation plan revision for 40 CFR 51.390. The alternative conformity requirements in conjunction with any applicable state or federal conformity requirements shall be proposed to fulfill all of the requirements of and achieve results equivalent to or better than Section 176(c) of the Clean Air Act. After the three-year duration of the pilot program has expired, areas will again be subject to all of the requirements of 20.11.3 NMAC and 40 CFR Part 51, Subpart T, or to the requirements of any implementation plan revision that was previously approved by EPA in accordance with 40 CFR 51.390.
[20.11.3.129 NMAC - Rn, 20.11.3.227 NMAC, 11/15/10]

20.11.3.130 to 20.11.3.199 [Reserved]

20.11.3.200 to 20.11.3.227 [Reserved]
[Sections 200-227 renumbered to Sections 103-129, 11/15/10]

20.11.3.228 to 20.11.3.389 [Reserved]

20.11.3.390 APPLICABLE LAW: The federal conformity rules under 40 CFR Part 93 Subpart A, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is approved by

EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) criteria and procedures in 20.11.3 NMAC shall govern conformity determinations and the federal conformity regulations contained in 40 CFR Part 93 shall apply only for the portion, if any, of 20.11.3 NMAC conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until 20.11.3 NMAC is adopted.
[20.11.3.390 NMAC - N, 11/15/10]

HISTORY OF 20.11.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.
Regulation No. 42, Transportation Conformity, 12/16/94.

History of Repealed Material: 20 NMAC 11.03, Transportation Conformity, filed 10/27/95 repealed and replaced by 20 NMAC 11.03, Transportation Conformity, filed 06/01/98.

Other History: Regulation No. 42, Transportation Conformity, filed 12/16/94 was reformatted, renumbered and replaced by 20 NMAC 11.03, Transportation Conformity, filed 10/27/95.
20 NMAC 11.03, Transportation Conformity, filed 06/01/98 renumbered, reformatted, amended, and replaced by 20.11.3 NMAC, effective 6/01/02.